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DEPARTMENT OF STATE

22 CFR Parts 35, 103, 127 and 138

RIN 1400-AE09

[Public Notice: 9828]

2017 Civil Monetary Penalties Inflationary Adjustment

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This final rule is issued to adjust the civil monetary penalties (CMP) for regulatory provisions maintained and enforced by the Department of State. The revised CMP adjusts the amount of civil monetary penalties assessed by the Department of State based on the December 2016 guidance from the Office of Management and Budget. The new amounts will apply only to those penalties assessed on or after the effective date of this rule, regardless of the date on which the underlying facts or violations occurred.

DATES: This final rule is effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]

FOR FURTHER INFORMATION CONTACT: Alice Kottmyer, Attorney-Adviser, Office of Management, kottmyeram@state.gov. ATTN: Regulatory Change, CMP Adjustments, (202) 647-2318.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties

Inflation Adjustment Act of 1990, Pub. L. 101-410 (the 1990 Act), as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104-134 (the 1996 Act), required the head of each agency to adjust its CMPs for inflation no later than October 23, 1996 and required agencies to make adjustments at least once every four years thereafter. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Section 701 of Pub. L. 114-74 (the 2015 Act) further amended the 1990 Act by requiring agencies to adjust CMPs, if necessary, pursuant to a “catch-up” adjustment methodology prescribed by the 2015 Act, which mandated that the catch-up adjustment take effect no later than August 1, 2016. Additionally, the 2015 Act required agencies to make annual adjustments to their respective CMPs in accordance with guidance issued by the Office of Management and Budget (OMB).

Based on these statutes, the Department of State (the Department) published a final rule on June 8, 2016, to implement the “catch-up” provisions (“June 2016 final rule”). *See* 81 FR 36791.

On December 16, 2016, OMB notified agencies that the annual cost-of-living adjustment multiplier for 2017, based on the Consumer Price Index, is 1.01636. Additional information may be found in OMB

Memorandum M-17-11, which can be found at

https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf. This final rule amends Department CMPs for fiscal year 2017.

Within the Department of State (Title 22, Code of Federal Regulations), this rule affects four areas:

(1) Part 35, which implements the Program Fraud Civil Remedies Act of 1986 (PFCRA), codified at 31 U.S.C. 3801-3812;

(2) Part 103, which implements the Chemical Weapons Convention Implementation Act of 1998 (CWC Act);

(3) Part 127, which implements the penalty provisions of sections 38(e), 39A(c), and 40(k) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(e), 2779a(c), 2780(k)); and

(4) Part 138, which implements Section 319 of Public Law 101-121, codified at 31 U.S.C. 1352, and prohibits recipients of federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the federal government in connection with a specific contract.

Specific Changes to 22 CFR Made by this Rule

I. Part 35

The PFRCA, enacted in 1986, authorizes agencies, with approval from the Department of Justice, to pursue individuals or firms for false claims. According to the June 2016 final rule, the maximum liability under the PFRCA is \$10,781, up to a maximum of \$323,442. Applying the 2016 multiplier (1.01636) provided by OMB, the new maximum liabilities are as follows: \$10,957, up to a maximum of \$328,734.

II. Part 103

The CWC Act provided domestic implementation of the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction. The penalty provisions of the CWC Act are codified at 22 U.S.C. 6761. Based on the June 2016 final rule, a person violating 22 U.S.C. 6761(a)(1)(A), *Prohibited acts relating to inspections*, is subject to a civil penalty of an amount not to exceed \$36,256 for each such violation. A person violating 22 U.S.C. 6761(a)(1)(B), *Recordkeeping violations*, is subject to a civil penalty in an amount not to exceed \$7,251 for each such violation.

Applying the 2016 multiplier (1.01636), the new maximum amounts are as follows: *Prohibited acts related to inspections*, \$36,849; for *Recordkeeping violations*, \$7,370.

III. Part 127

The Assistant Secretary of State for Political-Military Affairs is responsible for the imposition of CMPs under the International Traffic in Arms Regulations (ITAR), which is administered by the Directorate of Defense Trade Controls (DDTC).

(1) AECA section 38(e):

According to the June 2016 final rule, the new maximum penalty under 22 U.S.C. 2778(e), or Section 38(e) of the AECA, is \$1,094,010 per violation. Applying the 2016 multiplier (1.01636), the new maximum penalty is \$1,111,908.

(2) AECA section 39A(c):

According to the June 2016 final rule, the new maximum adjusted penalty for 22 U.S.C. 2779a(c), or Section 39A(c) of the AECA, is \$795,445 per violation. Applying the 2016 multiplier (1.01636), the new maximum penalty is \$808,458.

(3) AECA section 40(k):

According to the June 2016 final rule, the maximum penalty for 22 U.S.C. 2780(k), or Section 40(k) of the AECA, is \$946,805 per violation. Applying the 2016 multiplier (1.01636), the new maximum penalty is \$962,295.

IV. Part 138

Section 319 of Pub. L. 101-121, codified at 31 U.S.C. 1352, provides penalties for recipients of federal contracts, grants, and loans who use appropriated funds to lobby the Executive or Legislative Branches of the federal government in connection with a specific contract, grant, or loan. Any person who violates that prohibition is subject to a civil penalty. The statute also requires each person who requests or receives a federal contract, grant, cooperative agreement, loan, or a federal commitment to insure or guarantee a loan, to disclose any lobbying; there is a penalty for failure to disclose.

The June 2016 final rule raised the maximum penalties for both improper expenditures and failure to disclose, to not less than \$18,936 and not more than \$189,361. Applying the 2016 multiplier (1.01636), the new maximum penalty under 31 U.S.C. 1352 is: not less than \$19,246, and not more than \$192,459.

Effective Date of Penalties

The revised CMP amounts will go into effect on the date this rule is published. All violations for which CMPs are assessed on or after the effective date of this rule, regardless of whether the violation occurred before the effective date, will be assessed at the adjusted penalty level.

Future Adjustments and Reporting

The 2015 Act directed agencies to undertake an annual review of CMPs using a formula prescribed by the statute. Annual adjustments to CMPs are made in accordance with the guidance issued by OMB. As in this rulemaking, the Department of State will publish notification of annual inflation adjustments to CMPs in the *Federal Register* no later than January 15 of each year, with the adjusted amount taking effect immediately upon publication.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is publishing this rule using the “good cause” exception to the Administrative Procedure Act (5 U.S.C. 553(b)), as the Department has determined that public comment on this rulemaking would be impractical, unnecessary, or contrary to the public interest. This rulemaking is mandatory; it implements Public Law 114-74.

Regulatory Flexibility Act

Because this rulemaking is exempt from Section 553 of the Administrative Procedures Act, a Regulatory Flexibility Analysis is not required.

Unfunded Mandates Reform Act of 1995

This rule does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This amendment will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Executive Orders 12866 and 13563

The Department believes that benefits of the rulemaking outweigh any costs, and there are no feasible alternatives to this rulemaking. It is the

Department's position that this rulemaking is not an economically significant rule under the criteria of Executive Order 12866, and is consistent with the provisions of Executive Order 13563.

Executive Order 12988

The Department of State has reviewed the proposed amendment in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, Executive Order 13175 does not apply to this rulemaking.

Paperwork Reduction Act

This rulemaking does not impose or revise any information collections subject to 44 U.S.C. Chapter 35.

List of Subjects

22 CFR Part 35

Administrative practice and procedure, Claims, Fraud, Penalties.

22 CFR Part 103

Administrative practice and procedure, Chemicals, Classified information, Foreign relations, Freedom of information, International organization, Investigations, Penalties, Reporting and recordkeeping requirements.

22 CFR Part 127

Arms and munitions, Exports.

22 CFR Part 138

Government contracts, Grant programs, Loan programs, Lobbying, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth above, 22 CFR parts 35, 103, 127, and 138 are amended as follows:

PART 35 – PROGRAM FRAUD CIVIL REMEDIES

1. The authority citation for part 35 continues to read as follows:

Authority: 22 U.S.C. 2651a; 31 U.S.C. 3801 et seq.; Pub. L. 114-74, 129 Stat. 584.

§ 35.3 [Amended]

2. In § 35.3:

- a. Remove “\$10,781” and add in its place “\$10,957”, wherever it occurs.

b. In paragraph (f), remove “\$323,442” and add in its place “\$328,734”.

**PART 103 --REGULATIONS FOR IMPLEMENTATION OF THE
CHEMICAL WEAPONS CONVENTION AND THE CHEMICAL
WEAPONS CONVENTION IMPLEMENTATION ACT OF 1998 ON
THE TAKING OF SAMPLES AND ON ENFORCEMENT OF
REQUIREMENTS CONCERNING RECORDKEEPING AND
INSPECTIONS**

3. The authority citation for part 103 continues to read as follows:

Authority: 22 U.S.C. 2651a; 22 U.S.C. 6701 et seq.; Pub. L. 114-74,
129 Stat. 584.

§ 103.6 [Amended]

4. Amend § 103.6 to remove “\$36,256” and add in its place \$36,849”
in paragraph (a)(1), and to remove “\$7,251” and add in its place “\$7,370” in
paragraph (a)(2).

PART 127 – VIOLATIONS AND PENALTIES

5. The authority citation for part 127 continues to read as follows:

Authority: Sections 2, 38, and 42, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C.
2752, 2778, 2791); 22 U.S.C. 401; 22 U.S.C. 2651a; 22 U.S.C. 2779a; 22
U.S.C. 2780; E.O. 13637, 78 FR 16129; Pub. L. 114-74, 129 Stat. 584.

§ 127.10 [Amended]

6. Section 127.10 is amended as follows:

- a. In paragraph (a)(1)(i), remove “\$1,094,010” and add in its place “\$1,111,908”;
- b. In paragraph (a)(1)(ii), remove “\$795,445” and add in its place “\$808,458”; and
- c. In paragraph (a)(1)(iii), remove “\$946,805” and add in its place “962,295.”

PART 138 – RESTRICTIONS ON LOBBYING

- 7. The authority citation for part 138 continues to read as follows:

Authority: 22 U.S.C. 2651a; 31 U.S.C. 1352; Pub. L. 114-74, 129 Stat. 584.

- 8. Revise the heading of part 138 to read as set forth above.

§ 138.400 [Amended]

- 9. Amend § 138.400 by removing “\$18,936” and “\$189,361” and adding in their place “\$19,246” and “\$192,459”, respectively, wherever they occur.

January 4, 2017

Dated

Alicia Frechette,
Executive Director,
Office of the Legal Adviser & Bureau of
Legislative Affairs,
Department of State.